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The Legal Mechanism of Criminal Legislation for Tax Crimes

Abstract: The funds collected through taxes and levies are allocated by the state for purposes of public interest: national defence, the effective functioning of healthcare institutions, the provision of educational facilities, the maintenance of law enforcement bodies, and so on. Accordingly, the state faces the critical task of preventing tax evasion and non-payment of levies. The primary means of addressing this issue is by imposing on individuals and legal entities the obligation to pay taxes and establishing criminal liability for acts resulting in the non-receipt of the relevant contributions into the state's budgetary system. The study aimed to identify the legal mechanisms within criminal legislation concerning tax offences. The authors concluded that amendments to the Criminal Code and the Criminal Procedure Code of Russia will impact business practices and state policy. However, certain procedural aspects remain insufficiently developed by the legislature. For instance, the court, rather than the investigator, must determine the amount of tax underpayment by considering the actual expenses incurred by the taxpayer.

Keywords: Criminal Code, Criminal Procedure Code, criminal legislation of Russia, tax revenues.

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Правовой механизм уголовного законодательства за налоговые преступления

Аннотация: Денежные средства, полученные благодаря налогам и сборам, распределяются государством на общепользные цели: оборону страны, нормальное функционирование органов здравоохранения, обеспечение образовательных учреждений, содержание правоохранительных органов и так далее. В связи с этим перед государством стоит важная задача в предупреждении неуплаты налогов и сборов. Главным способом решения данной проблемы является возложение на физических и юридических лиц обязанности по их уплате, а также установление уголовной ответственности за совершение деяний в следствии которых в бюджетную систему государства не

поступают соответствующие отчисления. Целью исследования было определение правового механизма уголовного законодательства за налоговые преступления. Авторы пришли к заключению, что изменения в Уголовном Кодексе и Уголовно-Процессуальном Кодексе России отразятся на ведении бизнеса и политике государства, при этом законодателем не совсем доработаны процессуальные вопросы, где определять размер недовмки налогоплательщика с учётом действительного размера его расходов приходится суду, а не следователю.

Ключевые слова: уголовный кодекс, уголовно-процессуальный кодекс, уголовное законодательство России, налоговые поступления.

Abbreviations:

CC is the Criminal Code of Russia,

CPC is the Code of Criminal Procedure of Russia,

TC is the Tax Code of Russia.

Introduction

It is impossible to overlook the immense role of the tax system in the standard existence and functioning of the state. The state allocates the funds obtained through taxes and levies for public benefit: national defence, the effective operation of healthcare institutions, the provision of educational facilities, the maintenance of law enforcement bodies, and so on. In this regard, the state faces the crucial task of preventing tax evasion and non-payment of levies. The primary solution to this issue lies in imposing the obligation to pay taxes on individuals and legal entities and establishing criminal liability for actions that fail to make the corresponding contributions to the state's budgetary system.

Results

As stated in Article 57 of the Constitution, one of the individual's duties is to pay the taxes and levies established by law legally. Moreover, Paragraph 5 of Article 23 of the TC stipulates that if a taxpayer (or payer of levies or insurance contributions) fails to fulfil or improperly fulfils their obligations, they are held accountable according to Russian legislation.

Criminal offences related to violations of tax legislation are classified in the section of the CC that deals with economic crimes. These primarily include the offences described in Articles 194, 198, 199, 199, 199, 199 of the CC.

The legislature recently made significant changes to these offences. To liberalise this area, the Federal Law No. 78-FZ (2023) was passed, reducing the statute of limitations for criminal liability, modifying the procedure for bringing charges, and establishing shorter prison sentences.

According to the amendments, the direct object of protection is the public relations that safeguard the established procedure for paying taxes and/or levies or insurance contributions by individuals and legal entities (Brilliantov, 2022). These changes involve a reduction in the maximum punishment for crimes provided for in the second parts of Articles 199, 199, 199 of the CC, with the prison sentence now set at 5 years, instead of the previously prescribed 6 years, and 3 years of imprisonment for the second part of Article 199, instead of the previously established 4 years (On the Practice..., 2019).

As a result, these offences are now classified as medium-severity crimes. According to Paragraph “b” of Part 1 of Article 78 of the CC, the statute of limitations for bringing criminal charges has been reduced to 6 years. Similarly, the statute of limitations for bringing criminal charges under Part 2 of Article 199 of the CC has been reduced from 6 to 2 years.

According to Paragraph 2 of Item 4 of the Resolution of the Plenary Session of the Supreme Court (2019), which states that the moment the crime is deemed to have ended is the actual non-payment of taxes, levies, and social security contributions within the deadline set by the tax and levy legislation. Therefore, based on the above, if six years have passed since the expiration of the legally established deadline for fulfilling the obligation to pay tax payments, no criminal case can be initiated, and criminal prosecution will not be pursued against the person who has evaded payment due to the expiration of the statute of limitations for criminal liability.

Changes have also affected the CPC, specifically Part 1 of Article 24, Part 2 of Article 28.1, and Articles 144 and 148 of the CPC.

Suppose the organisation has fully paid the outstanding taxes, fines, and penalties. In that case, there will be grounds to refuse to initiate a criminal case and discontinue any ongoing criminal proceedings. Additionally, according to the CPC, tax authorities are now directly obligated to inform law enforcement agencies about settling all debts based on the materials received from the inquiry body concerning the non-payment of social insurance contributions for workplace accidents and occupational diseases.

What impact will these amendments to the CC and CPC have on society? Various experts have expressed their views on this matter. For example, Larisa Naumenko, an expert on business legal protection at the MGO “Support of Russia,” states that this is a positive interaction between the state and business. Natalia Ryabova, Deputy Head of the Expert-Legal Centre of the Commissioner for Entrepreneurs’ Rights under the President, comments: “The definite advantage of the new law is the reduction of the maximum sanctions for tax crimes and, consequently, the statute of limitations for criminal liability in such cases.” (Kulikon, 2023)

Conclusion

In the authors’ opinion, these amendments will play a significant role in business development, as the pressure from the state on businesses will considerably decrease, substantially impacting the country’s economy. Supporting our viewpoint, we can refer to the 2023 statistics on registered tax-related crimes, where the indicator has decreased by 6.3% compared to 2022. In our view, it would be logical to amend the CPC to require the investigation to determine the amount of tax underpayment, considering the actual size of the taxpayer’s expenses. This would make the process of criminal liability more orderly. However, as stated in Paragraph 14 of the Resolution of the Plenary Session of the Supreme Court No. 48 (2019), this is the court’s responsibility. However, this should also play a significant role at the pre-trial stage.

Thus, it can be concluded that the amendments to the CC and CPC will impact business operations and state policy. However, the legislator has not fully addressed the procedural issues, where the court, rather than the investigator, must determine the amount of tax underpayment, considering the taxpayer’s actual expenses.

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